

1987 BILL 3

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 3

MENTAL HEALTH ACT

THE MINISTER OF HOSPITALS AND MEDICAL CARE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 3

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1987

MENTAL HEALTH ACT

(Assented to , 1987)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "admission certificate" means a certificate issued pursuant to section 2;
- (b) "board" means
 - (i) the board of an approved hospital under the *Hospitals Act* that is designated as a facility,
 - (ii) a board of a hospital under the *Provincial General Hospitals Act* that is designated as a facility, or
 - (iii) if a facility is not an approved hospital under the *Hospitals Act* or a hospital under the *Provincial General Hospitals Act*, the person in charge of the facility;
- (c) "facility" means a place or part of a place designated in the regulations as a facility;
- (d) "formal patient" means a person admitted to and detained in a facility pursuant to admission certificates or detained in a facility pursuant to renewal certificates;
- (e) "guardian" includes
 - (i) the parent or guardian of a minor,
 - (ii) the Children's Guardian with respect to a child who is the subject of a temporary guardianship order or a permanent

guardianship agreement or order under the *Child Welfare Act*,
and

(iii) a guardian appointed under the *Dependent Adults Act*;

(f) “mental disorder” means lack of reason or lack of control of behaviour;

(g) “Minister” means, with respect to any provision of this Act, the member or members of the Executive Council designated by the Lieutenant Governor in Council;

(h) “nearest relative” means, with respect to a formal patient,

(i) the person first listed in the following paragraphs, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any paragraph being preferred to the other of those relatives regardless of gender:

(A) spouse;

(B) son or daughter;

(C) father or mother;

(D) brother or sister;

(E) grandfather or grandmother;

(F) grandson or granddaughter;

(G) uncle or aunt;

(H) nephew or niece,

or

(ii) any person the board designates in writing to act as the nearest relative if there is no nearest relative within any description in subclause (i) or if, in the opinion of the board, the nearest relative determined under subclause (i) would not act or is not acting in the best interest of the formal patient;

(i) “patient” means

(i) a formal patient,

(ii) a person detained pursuant to an order of the Lieutenant Governor under the *Criminal Code* (Canada) or an order under section 20(1)(i) of the *Young Offenders Act* (Canada),
and

(iii) a person remanded to a facility pursuant to the *Criminal Code* (Canada) or the *Young Offenders Act* (Canada);

(j) “psychiatrist” means a person who is registered under the *Medical Profession Act* and who has been granted specialty recognition in psychiatry by the College of Physicians and Surgeons of Alberta;

(k) “renewal certificate” means a certificate issued pursuant to section 7;

(l) "review panel" means a review panel established pursuant to section 31;

(m) "spouse", with respect to a patient, includes a person who, although not married to the patient, cohabited with the patient as his spouse immediately preceding the patient's admission to a facility.

PART 1

ADMISSION AND DETENTION

Admission
certificate

2 When a physician examines a person and is of the opinion that the person is

- (a) suffering from mental disorder,
- (b) in a condition presenting a danger to himself or others, and
- (c) unsuitable for admission to a facility other than as a formal patient,

he may, not later than 24 hours after the examination, issue an admission certificate in the prescribed form with respect to the person.

Effect of 1
admission
certificate

3(1) One admission certificate is sufficient authority

- (a) for any person to apprehend and convey the person named in the certificate to a facility within 72 hours of the time it is issued for observation and assessment and to detain that person while he is being so conveyed until he arrives at the facility, and
- (b) for any physician to prescribe treatment for or to treat the person named in the certificate while he is being so conveyed until he arrives at the facility.

(2) While the person named in the admission certificate is being conveyed to the facility,

- (a) the control or restraint of the person shall be the minimum restraint reasonably required to care for, detain and control the person during conveyance, and
- (b) the treatment provided to the person shall be the minimum treatment that the physician who prescribes the treatment considers essential to care for, detain and control the person during conveyance.

(3) When a person is conveyed to a facility pursuant to 1 admission certificate, the certificate is sufficient authority

- (a) for the board to care for and provide the minimum restraint necessary to detain and control the person named in the certificate,
- (b) for a physician to provide for the minimum treatment that in the opinion of the physician is essential to care for, detain and control the person for the purpose of observation and assessment, and

(c) for 1 or more physicians to care for, detain, control, observe and examine the person named in the certificate,

for a period of 24 hours from the time that the person arrives at the facility.

Examination of
person detained

4(1) When a person is conveyed to a facility under section 9, 11 or 25 or detained in a facility pursuant to 1 admission certificate, the board shall ensure that the person is examined as soon as possible by a physician on the staff of the facility.

(2) When a person is conveyed to a facility under section 9, 11 or 25, that person shall be released on the expiry of 24 hours from the time that the person arrived at the facility unless, within that time, 2 admission certificates are issued with respect to that person.

(3) When a person is detained pursuant to 1 admission certificate, that person shall be released on the expiry of 24 hours from the time that the person arrived at the facility unless, within that time, another admission certificate is issued with respect to that person.

Contents of
admission
certificate

5 An admission certificate shall show

(a) the name of the person in respect of whom the certificate is issued,

(b) the name and address of the physician issuing it,

(c) the date and time at which the personal examination was conducted,

(d) the facts on which the physician formed his opinion that the person

(i) was suffering from mental disorder,

(ii) was in a condition presenting a danger to himself or others, and

(iii) was unsuitable for admission to a facility other than as a formal patient,

distinguishing the facts observed by him from the facts communicated to him by others,

(e) the name of the facility where the person was examined or, if the patient is not in a facility, the name and address of the facility to which the patient is to be conveyed, and

(f) the date and time of issue.

Effect of 2
admission
certificates

6(1) Two admission certificates are sufficient authority to observe, examine, care for, treat, control and detain the person named in them in a facility for a period of 1 month from the date the 2nd admission certificate is issued.

(2) No person shall be admitted as a formal patient at a facility unless at least 1 of the admission certificates is issued by a member of the staff of that facility.

Renewal
certificates

7(1) The period of detention of a formal patient may be extended when 2 physicians, after separate examinations by each of them, are of the opinion that the formal patient

- (a) is suffering from mental disorder,
- (b) is in a condition presenting a danger to himself or others, and
- (c) is unsuitable to continue at a facility other than as a formal patient,

and each issues a renewal certificate in the prescribed form within 24 hours after the examination.

(2) At least 1 of the physicians who issues a renewal certificate under this section shall be a member of the staff of the facility at which the formal patient is detained and at least 1 of the certificates shall be issued by a psychiatrist.

(3) Two renewal certificates are sufficient authority to observe, examine, care for, treat, control and detain the person named in them,

- (a) in the first case where 2 renewal certificates are issued, for a period of not more than 1 additional month,
- (b) in the 2nd case where 2 renewal certificates are issued, for a period of not more than 1 additional month, and
- (c) in the 3rd case and in each subsequent case where 2 renewal certificates are issued, for a period of not more than 6 additional months.

Contents of
renewal
certificate

8 A renewal certificate shall show

- (a) the name of the person in respect of whom the certificate is issued,
- (b) the name and address of the physician issuing it,
- (c) the date on which the personal examination was conducted,
- (d) the facts on which the physician formed his opinion that the person
 - (i) was suffering from mental disorder,
 - (ii) was in a condition presenting a danger to himself or others, and
 - (iii) was unsuitable to continue at a facility other than as a formal patient,

distinguishing the facts observed by him from the facts communicated to him by others,

- (e) the name of the facility where the person was examined, and
- (f) the date and time of issue.

Warrant for
apprehension

9(1) Anyone who has reasonable and probable grounds to believe that a person

(a) is suffering from mental disorder, and

(b) is in a condition presenting a danger to himself or others

may bring an information under oath before a provincial judge.

(2) If the provincial judge is satisfied that

(a) the person with respect to whom the information is brought should be examined in the interests of his own safety or the safety of others, and

(b) an examination can be arranged in no other way,

he may issue a warrant to apprehend that person for an examination.

(3) A hearing under this section shall be recorded.

(4) A warrant under this section

(a) may be directed to all or any peace officers and shall name or otherwise describe the person with respect to whom the warrant is issued, and

(b) is authority for a peace officer to apprehend the person named in the warrant and convey him to the nearest facility for examination.

(5) While a person is being conveyed to a facility under the authority of a warrant, the control and restraint of the person shall be the minimum restraint reasonably required to care for, detain and control the person during conveyance.

(6) Where a peace officer has not apprehended a person within 7 days of the date of the warrant, the warrant ceases to be effective unless, before the expiry of the 7-day period, a provincial judge extends the duration of the warrant under section 10.

Extension of
warrant

10(1) On the application of a peace officer, a provincial judge may extend the duration of a warrant issued under section 9 for a period of up to 7 days from the day on which the warrant expires under that section.

(2) If, in the opinion of a peace officer, it would be impracticable to appear personally before a provincial judge to apply for an order in accordance with subsection (1), the peace officer may make the application by telephone or other means of telecommunication to a provincial judge.

(3) The information on which an application for an order by telephone or other means of telecommunication is based shall be given on oath and shall be recorded verbatim by the judge who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the court.

(4) For the purposes of subsection (3), an oath may be administered by telephone or other means of telecommunication.

(5) The information submitted by telephone or other means of telecommunication shall include

- (a) a statement of the circumstances that make it impracticable for the peace officer to appear personally before a provincial judge, and
- (b) a statement as to any prior application for an extension under this section in respect of the same person of which the peace officer has knowledge.

(6) A provincial judge who is satisfied that an application made by telephone or other means of telecommunication

- (a) conforms to the requirements of subsection (5), and
- (b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1)

may make an order extending the duration of the warrant for a period of up to 7 days from the day on which the warrant expires under section 9.

(7) If a provincial judge makes an order under subsection (6),

- (a) the judge shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,
- (b) the peace officer, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the provincial judge making the order and the time, date and place at which it was made, and
- (c) the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the court.

(8) An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to dispense with personal appearance for the purpose of making an application under subsection (1).

Peace officer's
power

11(1) When a peace officer has reasonable and probable grounds to believe that

- (a) a person is suffering from mental disorder,
- (b) the person is in a condition presenting a danger to himself or others,
- (c) the person should be examined in the interests of his own safety or the safety of others, and
- (d) the circumstances are such that to proceed under section 9 would be dangerous,

he may apprehend the person and convey him to the nearest facility for examination.

(2) While a person is being conveyed to a facility under subsection (1), the control and restraint of the person shall be the minimum restraint reasonably required to care for, detain and control the person during conveyance.

(3) When a peace officer conveys a person to a facility, he shall complete a statement in the prescribed form for the use of the facility, setting out

(a) the name of the person conveyed, if known,

(b) the date, time and place at which the person was apprehended, and

(c) the grounds on which the peace officer formed his belief under subsection (1).

Order for
examination
and treatment
as out-patient

12(1) When a judge has reason to believe that a person who appears before him charged with or convicted of an offence suffers from mental disorder, the judge may order the person to attend a facility or diagnostic and treatment centre as an out-patient for examination.

(2) When an examination is made under this section, a report in writing as to the mental condition of the person shall be made to the judge.

(3) If the report indicates that the person examined needs treatment for mental disorder, the judge may order the person to attend a facility or diagnostic and treatment centre for treatment as an out-patient.

Remand to
facility for
examination

13(1) A person who, pursuant to the *Criminal Code* (Canada) or the *Young Offenders Act* (Canada), is remanded to custody for observation may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

(2) A person who, pursuant to the *Criminal Code* (Canada), is detained under the authority of an order of the Lieutenant Governor may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

(3) A person who, pursuant to the *Young Offenders Act* (Canada), is detained for treatment may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

PART 2

ADMINISTRATION

Duties toward
patients

14(1) When a person becomes a formal patient or the subject of renewal certificates,

(a) the board shall inform the formal patient and make a reasonable effort to inform his guardian, if any, and, unless the patient objects, his nearest relative, of

(i) the reason, in simple language, for the admission or the issuance of renewal certificates, and

(ii) the patient's right to apply to the review panel for cancellation of the admission certificates or renewal certificates,

and

(b) the board shall give the formal patient, his guardian, if any, any person designated by the patient and, unless the formal patient objects, his nearest relative a written statement of

(i) the authority for the patient's detention and the period thereof, including copies of the admission or renewal certificates,

(ii) the function of review panels,

(iii) the name and address of the chairman of the review panel for the facility, and

(iv) the right to apply to the review panel for cancellation of the admission certificates or renewal certificates.

(2) In the event of language difficulty, the board shall obtain a suitable interpreter and provide the explanation and written statement referred to in subsection (1) in the language spoken by the formal patient or his guardian.

(3) In addition to giving an explanation and written statement pursuant to this section, the board shall, having regard to the circumstances in each case in which the formal patient desires to exercise his right to apply for cancellation of admission certificates or renewal certificates, do any other things the board considers expedient to facilitate the submission of an application.

(4) If a patient has designated another person to receive notices, the board shall also mail a copy of all notices and information required to be given to the patient to the person designated at the address provided by the patient.

Communications
by and to
patients

15 No communication written by a patient in a facility or to a patient in a facility shall be opened, examined or withheld and its delivery shall not in any way be obstructed or delayed by the board or a member of the staff of a facility.

Visiting hours

16(1) A patient may receive visitors during hours fixed by the board unless a physician considers that a visitor would be detrimental to the patient's health.

(2) Notwithstanding subsection (1), a lawyer acting for a patient may visit the patient at any time.

Objection to
treatment

17(1) If a formal patient objects to any treatment for mental disorder he is receiving or will receive at a facility, the attending physician shall not administer the treatment unless the review panel makes an order under this section.

(2) An attending physician who considers it in the best interests of a formal patient to administer treatment to which the patient objects may apply to a review panel for an order directing that the treatment may be administered.

(3) On receipt of an application under this section, the chairman of a review panel shall give reasonable notice of the date, time, place and purpose of the hearing

- (a) to the patient and his guardian, if any,
- (b) to any person designated by the patient, the nearest relative, unless the patient objects, and any other person that the chairman considers may be affected by the application and should be notified,
- (c) to the applicant,
- (d) to the board of the facility in which the patient is detained, and
- (e) to the medical director of the facility.

(4) A hearing shall be held within 7 days of the receipt of an application under this section by the chairman.

(5) Before it makes an order under this section the review panel must be satisfied after hearing the evidence of the attending physician and any other evidence it considers relevant that

- (a) the attending physician has examined the patient,
- (b) he is of the opinion that
 - (i) the mental condition of the patient would be or is likely to be substantially improved by the specific treatment or course of treatment proposed,
 - (ii) the mental condition of the patient will not likely improve without the specific course of treatment proposed,
 - (iii) the proposed treatment is required to prevent the mental condition of the patient from deteriorating, or
 - (iv) the proposed treatment will render the patient less dangerous

and

- (c) any alternative treatments are less appropriate.

(6) Notwithstanding anything in this section, an attending physician shall not perform psychosurgery on a formal patient unless

- (a) the patient consents to the psychosurgery, and
- (b) a review panel makes an order under this section directing that the psychosurgery may be performed.

(7) The review panel may

- (a) make an order under this section, which may be subject to any conditions that the review panel considers appropriate, or
- (b) refuse to make an order under this section.

Confidentiality
of diagnoses,
records, etc.

18(1) In this section,

- (a) “board” means the board or person in charge of a diagnostic and treatment centre;

(b) “diagnostic and treatment centre” or “centre” means a place established by the Minister pursuant to section 42(a) or (b) and includes a facility that is not an approved hospital under the *Hospitals Act* or a Provincial General Hospital or a Mental Health Hospital under the *Provincial General Hospitals Act*;

(c) “legal representative” means an executor or administrator of the estate of a deceased person, the guardian or trustee of a dependent adult under the *Dependent Adults Act* or the guardian of a minor.

(2) The board of a diagnostic and treatment centre shall cause a record to be kept of the diagnostic and treatment services provided to every person in the diagnostic and treatment centre.

(3) For the purpose of assessing the standards of care furnished to persons in a diagnostic and treatment centre or improving mental health care facilities or procedures or for any other purpose considered by the Minister to be in the public interest, the Minister or any person authorized by the Minister may require that all or any of the following be sent to the Minister or any person designated by the Minister:

(a) medical and other records in a centre;

(b) extracts from and copies of those records;

(c) diagnoses, charts or information available in respect of any person receiving diagnostic and treatment services in a centre.

(4) Information obtained from records maintained in a diagnostic and treatment centre or from persons having access to them shall be treated as private and confidential information in respect of the person receiving diagnostic and treatment services in the centre and shall be used solely for the purposes described in subsection (3) and the information shall not be published, released or disclosed in any manner that would be detrimental to the personal interest, reputation or privacy of that person or that person’s attending physician or any other person providing diagnostic or treatment services to that person.

(5) Any person who knowingly and wilfully releases or discloses information described in subsection (4) to a person not authorized to receive it is guilty of an offence and is liable to a fine of not more than \$2000.

(6) Notwithstanding subsection (4) or any other law, the Minister, a person authorized by the Minister, a board, an employee of a board or a physician may disclose any diagnosis, record or information relating to a person receiving diagnostic and treatment services in a centre

(a) to the person to whom the diagnosis, record or information relates or his legal representative,

(b) with the written consent of the person to whom the diagnosis, record or information relates, or without that consent if the person is not mentally competent, to any person, if in the opinion of the person making the disclosure it is in the best interests of

the person to whom the diagnosis, record or information relates to disclose that information,

(c) to a department or agency of the Government or to a physician if that department, agency or physician is responsible for providing continued treatment to the person to whom the diagnosis, record or information relates,

(d) to the Public Guardian if the diagnosis, record or information is, in the opinion of the person making the disclosure, relevant to the making of a guardianship order or a trusteeship order under the *Dependent Adults Act* in respect of the person to whom the diagnosis, record or information relates,

(e) to a review panel that is to hear or is hearing an application from the person to whom the diagnosis, record or information relates, or to the Court of Queen's Bench for the purposes of an appeal under section 40,

(f) to a person conducting bona fide research or medical review if the disclosure is made in a manner that ensures confidentiality of the diagnosis, record or information,

(g) to a Director of Medical Services under the *Occupational Health and Safety Act* when the diagnosis, record or information relates to an accident that occurred in respect of the person's occupation or one or more of his former occupations, or to a disease that is related to the person's occupation or one or more of his former occupations,

(h) to a Workers' Compensation Board, the Alberta Hospital Association or a provincial hospital insurance authority if the information is required in order to establish responsibility for payment,

(i) to the Department of National Health and Welfare (Canada) for purposes in connection with the *Canada Health Act* (Canada),

(j) to a medical records school for training purposes if the disclosure is made in such a manner that names of the persons to whom the records relate are not revealed or made identifiable,

(k) to a board of review appointed pursuant to the *Criminal Code* (Canada) that is to review the case of the person to whom the diagnosis, record or information relates,

(l) to the council of the College of Physicians and Surgeons or an investigating committee under the *Medical Profession Act* or the Professional Conduct Committee or the Appeals Committee under the *Nursing Profession Act*, if

(i) an officer of the College or the Alberta Association of Registered Nurses, as the case may be, makes a written request for the diagnosis, record or information and the disclosure is consented to by the person to whom the diagnosis, record or information relates or his legal representative, or

- (ii) the disclosure is made in compliance with a notice under section 49 of the *Medical Profession Act* or section 72 of the *Nursing Profession Act* to attend as a witness or to produce documents,
 - (m) to a person conducting a preliminary investigation, the Discipline Committee or the Board under the *Dental Profession Act* if
 - (i) an officer of The Alberta Dental Association makes a written request for it and the disclosure is consented to by the patient or his legal representative, or
 - (ii) the disclosure is made by a member of the board in compliance with a notice under section 56 of the *Dental Profession Act* to attend as a witness or to produce documents,
 - (n) to a local board under the *Public Health Act* if the local board has assumed responsibility for any care or treatment of the patient,
 - (o) to the Health Disciplines Board or a Health Discipline Committee under the *Health Disciplines Act* if the disclosure is made by a member or employee of the board in compliance with a notice under section 20 of the *Health Disciplines Act*, or
 - (p) to a person conducting a preliminary investigation or the Discipline Committee under the *Psychology Profession Act* if
 - (i) an officer of the Psychologists Association of Alberta makes a written request for it and the disclosure is consented to by the patient or his legal representative, or
 - (ii) the disclosure is made by a member of the board in compliance with a notice under section 41 of the *Psychology Profession Act* to attend as a witness or to produce documents.
- (7) Notwithstanding subsection (4) or any other law, if the Provincial Court issues a subpoena pursuant to the *Child Welfare Act*, a physician, a board, an employee of a board, the Minister or a person authorized by the Minister shall release, in accordance with that Act, any diagnosis, record or information in respect of the child to whom the proceedings before the Provincial Court relate or with respect to a guardian of that child.
- (8) The person in charge of a diagnostic and treatment centre shall, after the discharge of a patient from the centre for the purpose of transferring him to another centre, hospital or nursing home inside or outside Alberta, forward to that other centre, hospital or nursing home copies of the appropriate records of diagnostic and treatment services provided in respect of that patient for the use of that other centre, hospital or nursing home.
- (9) Notwithstanding subsection (4) or any other law, a medical examiner appointed under the *Fatality Inquiries Act* is entitled to inspect and make copies of any diagnosis, record or information relating to a person receiving diagnostic and treatment services in a centre.

(10) Notwithstanding subsection (4) or any other law, when the Minister, a person authorized by the Minister, a board or an employee of a board or a physician

(a) is unable to disclose any diagnosis, record or information relating to a person by reason of subsection (4), or

(b) refuses to disclose any diagnosis, record or information relating to a person pursuant to subsection (6),

the person or his legal representative may apply to a court for an order directing the person having the diagnoses, records or information to release them or a copy of them to the person to whom the information relates or his legal representative or to some other person named in the order.

(11) An application under subsection (10) shall be made

(a) on motion in the course of any action or proceedings to which the person to whom the diagnosis, record or information relates or his legal representative is a party, to a judge of the court in which the action or proceedings are taken, or

(b) by way of originating notice to the Court of Queen's Bench, in any other case.

(12) An application under subsection (10) shall be heard in private and on the hearing of the motion the onus of showing why the order should not be made for the release of the diagnosis, record or information, or a copy of it, is on the respondent to the motion.

Refusal of admission to facility

19(1) When any person is conveyed to a facility pursuant to 1 admission certificate and another admission certificate is not issued with respect to that person, the board shall inform the person and, if the person does not object, the referring source, of the reasons why another certificate was not issued and may refer the person to another facility or service, in which case the referring source shall, unless the person objects, be informed of any alternative arrangements made.

(2) Nothing in this section or section 20 abrogates or restricts the authority conferred on a board by the *Hospitals Act*, the *Provincial General Hospitals Act* or any other Act.

Treatment and security of patients

20(1) On the admission of a patient to a facility, a board shall provide the diagnostic and treatment services that the patient is in need of and that the staff of the facility is capable of providing and able to provide.

(2) The board of a facility in which a patient is detained shall determine what level of security is reasonably required for each patient in view of all the circumstances and thereafter provide it and review the necessary level of security at intervals of not more than 6 months.

Leave of absence

21(1) Notwithstanding any admission certificates or renewal certificates issued with respect to a formal patient, the medical director of a facility may grant a formal patient leave of absence from a facility.

(2) Leave of absence may be granted on any terms and conditions prescribed by the medical director and without restricting the gen-

erality of the foregoing may include a condition that the formal patient remain under the supervision and subject to the treatment of any person or persons designated by the medical director.

(3) When a formal patient is on a leave of absence granted under this section, the board may by notice in writing given to

- (a) the formal patient, or
- (b) the person supervising the patient,

revoke the leave of absence and recall the formal patient to the facility.

(4) When a formal patient refuses to return to the facility or when the medical director is unable to serve a notice in writing pursuant to subsection (3), the medical director may declare the formal patient to be absent without leave and order any peace officer to return the person to the facility.

(5) The order shall state the date on which the admission certificates or renewal certificates expire.

(6) Nothing in this section authorizes the granting of a leave of absence to a formal patient who is

- (a) detained pursuant to an order of the Lieutenant Governor under the *Criminal Code* (Canada),
- (b) remanded to a facility pursuant to the *Criminal Code* (Canada) or the *Young Offenders Act* (Canada), or
- (c) detained pursuant to the *Young Offenders Act* (Canada).

Return of formal
patient to facility

22(1) If a formal patient leaves a facility when leave of absence has not been granted, the board may order a peace officer to return the person to the facility.

(2) On receipt of

- (a) an order under subsection (1), or
- (b) an order under section 21,

every peace officer is empowered to apprehend, without warrant, the person named in the order and to return that person to the facility.

(3) A person who is returned to a facility under this section or section 21 may be detained for the remainder of the authorized period of detention to which he was subject when his absence was discovered or, if the certificates relating to that person have expired during the period the person was absent from the facility, the person shall be deemed to be a person in respect of whom 1 admission certificate is issued when he is apprehended by a peace officer under this section or section 21.

(4) The order of the board shall state the date of expiration of the admission certificates or renewal certificates, as the case may be.

Transfer to
another facility

23(1) A board may, if otherwise permitted by law and if arrangements have been made with the board of another facility, transfer a

patient to that facility on completing a memorandum of transfer in the prescribed form.

(2) When a patient is transferred under subsection (1), the authority conferred by any certificates relating to the patient continues in force in the facility to which he is transferred.

Hospital
treatment

24(1) When a patient requires hospital treatment that cannot be provided in the facility, the board may, if otherwise permitted by law, transfer the patient to a hospital for treatment and return him to the facility on the conclusion of the treatment.

(2) When a patient is transferred under subsection (1), the board of the hospital or a person designated by it has, in addition to the powers and duties conferred on it by any other Act, the powers and duties under this Act of a board in respect of the custody, control and treatment of the patient.

Transfer into
Alberta

25(1) When the Minister has reasonable and probable grounds to believe that a person who

- (a) is suffering from mental disorder,
- (b) is in a condition presenting a danger to himself or others, and
- (c) is unsuitable for admission to a facility other than as a formal patient,

may come or be brought into Alberta, the Minister may issue a certificate in the prescribed form authorizing a peace officer or other person to apprehend and convey the person named in the certificate to a facility for examination.

(2) While a person is being conveyed to a facility under subsection (1), the control and restraint of the person shall be the minimum restraint reasonably required to care for, detain and control the person during conveyance.

Transfer out
of Alberta

26 When it appears to the Minister

- (a) that a formal patient has come or been brought into Alberta and that his observation, care and treatment is the responsibility of another jurisdiction, or
- (b) that it would be in the best interests of a formal patient to be cared for in another jurisdiction,

the Minister may, on compliance in Alberta with the laws of the other jurisdiction with all necessary modifications, issue a transfer in the prescribed form to authorize a transfer of the formal patient to the other jurisdiction.

Liability for
expenses

27 Subject to the regulations under this Act, section 46 of the *Hospitals Act* and the regulations under that Act respecting hospital charges apply with respect to a person in a facility, and the person liable for the payment of charges under section 46 of that Act is liable for the payment of the expenses incurred in connection with the examination, admission, treatment, care and maintenance of the person.

PART 3
DISCHARGE

Cancellation
or expiry of
certificates

28(1) A board shall comply with and take any action necessary to comply with a decision of a review panel concerning admission certificates or renewal certificates.

(2) When a formal patient no longer meets the criteria for admission, a physician shall cancel the admission certificates or renewal certificates, as the case may be.

(3) If the admission certificates or renewal certificates of a formal patient expire or are cancelled, he is thereupon in the facility on a voluntary basis subject to the by-laws of the board and shall be informed of that fact.

Removal after
discharge

29(1) When a person is discharged from a facility, the board shall, where reasonably possible, give notice of the discharge

(a) to his guardian, if any, and

(b) to his nearest relative, unless the person being discharged objects,

and, when applicable, shall state in the notice whether a certificate of incapacity issued under the *Dependent Adults Act* exists with respect to the person.

(2) When a person has been discharged and refuses or is unwilling to leave the facility, the board or the administrator of the facility, after consultation with the person's physician, or a committee of the medical staff established to consider such matters, or the Minister on the basis of reports of the attending physician and the facility records, may

(a) declare that the person is no longer in need of the services provided by that facility or of the services provided in a particular ward, section or unit of that facility, and is eligible for transfer or discharge, or

(b) move the person

(i) to another type of accommodation or to another ward, section or unit of the facility,

(ii) to an approved hospital, or

(iii) to a nursing home or other accommodation.

(3) Any person who has been declared eligible for transfer or discharge as provided in this section and who refuses or fails to move or leave when requested to do so is a trespasser.

(4) Any other person who remains on facility premises without the consent of the board or a representative of the board and fails or refuses to leave the premises when ordered to do so is a trespasser.

Return to
correctional
facility

30(1) Whether or not admission certificates or renewal certificates have been issued with respect to a person who is sent to a facility for treatment after having been sentenced to a correctional facility, he

may apply to the chairman of the review panel for the facility for an order transferring him back to a correctional facility.

(2) A review panel hearing an application under subsection (1) may

(a) make the order applied for, or

(b) cancel the admission certificates or renewal certificates.

(3) When a review panel makes an order transferring a person from a facility to a correctional facility or cancels admission certificates or renewal certificates under this section, the board of the facility in which the person is detained shall

(a) comply with the order, or

(b) if admission certificates or renewal certificates are cancelled, arrange to have the person returned to a correctional facility.

PART 4

REVIEW PANELS

Review panels

31(1) The Minister shall, in respect of each facility,

(a) appoint a chairman and a vice-chairman, and

(b) establish a roster of eligible persons to act as the other members

of review panels to hear applications under sections 17, 30, 35 and 36.

(2) A vice-chairman shall act in the absence or inability to act of the chairman.

(3) When an application under section 17, 30, 35 or 36 is made to the chairman of the review panel for a facility, the chairman shall appoint the other members of the review panel from the roster established by the Minister.

(4) A review panel shall be composed of

(a) the chairman or a vice-chairman, each of whom must be a lawyer,

(b) a psychiatrist,

(c) a physician, and

(d) a member of the general public.

(5) The persons appointed under this section shall not be appointed for a term exceeding 5 years, except that a person may be reappointed when 2 years have elapsed since the termination of his most recent previous appointment.

(6) The Minister may provide secretarial, legal, consultative and interpretive services and other assistance to review panels.

Quorum and
voting

32(1) A quorum for a review panel is the 4 members referred to in section 31(4).

- (2) Each member of the review panel is entitled to 1 vote, and in the event of a tie vote, the chairman or vice-chairman has a 2nd vote.
- (3) A decision of a majority of the members is the decision of the review panel.

Persons
prohibited as
members of
review panel

33(1) No person who is a member of the staff of a facility is eligible to sit as a member of a review panel when the panel is considering an application relating to a patient in that facility.

- (2) A person who is
- (a) related by blood or marriage to the patient,
 - (b) a spouse of the patient,
 - (c) a psychiatrist or physician or other person who is treating or who has treated the patient, or
 - (d) a lawyer who is acting or who has acted for the patient
- is not eligible to be appointed as or to sit as a member of a review panel for an application relating to that patient.

Authority of
review panel

34(1) A review panel shall hear and consider applications in accordance with this Act and the regulations and for that purpose the members of the review panel have all the powers, duties and immunities of a commissioner appointed under the *Public Inquiries Act*.

(2) All proceedings of a review panel shall be conducted in private and, subject to subsection (3), no person has the right to be present without the prior consent of the chairman.

(3) The applicant and his representative have the right to be personally present during the presentation of any evidence to the review panel and to cross-examine any person who presents evidence to the review panel.

(4) The chairman may adjourn a hearing for any period up to 21 days and, if the patient or his representative requests the adjournment, for a further period or periods.

(5) Where an application is made to a review panel and the review panel is of the opinion that disclosure of information to the patient might seriously endanger the safety of a third person, the review panel may refuse to disclose the information to the patient.

Application
for hearing

35(1) A formal patient, his guardian or a person on his behalf may apply to a review panel for cancellation of

- (a) admission certificates, or
- (b) renewal certificates,

by sending a notice of application to the chairman of the appropriate review panel in the prescribed form.

(2) The Minister or a board may submit an application under subsection (1) on behalf of a formal patient, but when an application is so made, the word “applicant” wherever it occurs in this Part means the formal patient and not the Minister or the board.

(3) Only 1 application may be made by a formal patient or a person on his behalf with respect to each 2 admission certificates or renewal certificates issued, but the Minister or a board may make as many applications as they consider necessary.

Review after
6 months

36 If a patient has been subject to admission certificates or renewal certificates for a continuous period of 6 months and neither he nor his representative has during that period applied for a review of the certificates, or an application for review of certificates has been withdrawn or cancelled during that period, the patient shall be deemed to have applied to the chairman of the review panel for the facility in which the patient is detained, who shall cause a review panel to hear and consider cancellation of the certificates relating to the patient.

Notice of hearing

37(1) On receipt of an application under section 35 or when an application is deemed to be made under section 36, the chairman of a review panel shall give notice of the date, time, place and purpose of the hearing

- (a) to the applicant and his guardian, if any,
- (b) to any person designated by the patient, to the nearest relative, unless the patient objects, and to any other person that the chairman considers may be affected by the application and should be notified,
- (c) to the board of the facility in which the patient is detained, and
- (d) to the medical director of the facility.

(2) The notice shall be served at least 7 days before the date of the hearing.

Hearing by
review panel

38(1) A review panel shall hear and consider an application under section 35(1) or 36 as soon as it is able to do so and in any case within 28 days of the receipt by the chairman of the application under section 35 or the date on which an application is deemed to be made under section 36, as the case may be.

(2) When the application is for the cancellation of admission certificates or renewal certificates, the review panel may

- (a) cancel the admission certificates or renewal certificates, as the case may be, that are in effect at the time of the hearing, or
- (b) refuse to cancel the admission certificates or renewal certificates.

(3) The chairman of the review panel shall within 7 days of a decision with respect to an application under section 35(1) or 36

- (a) advise the applicant of the decision orally or, if the applicant is no longer a patient of the facility, advise the applicant in writing of the decision by sending it to the applicant's forwarding address on record at the facility, and
- (b) advise the other persons referred to in section 37(1) of the decision in writing.

(4) When the review panel refuses to cancel admission certificates or renewal certificates, the written report of the decision of the review panel shall include a statement of the right of the applicant to appeal the decision of the review panel to the Court of Queen's Bench under section 40.

(5) When the application to the review panel was made by the Minister or the board, the chairman of the review panel shall send a copy of the report to the applicant and to the Minister or the board, as the case may be.

(6) Where the review panel decides not to cancel certificates, it shall give written reasons for its decision.

Onus

39 In applications to a review panel or to the Court of Queen's Bench to review admission certificates or renewal certificates, the onus is on the board of the facility in which the patient is residing to show that detention is required and that the patient meets the criteria referred to in sections 2 and 7(1).

Appeal to Court
of Queen's Bench

40(1) Within 14 days of the receipt of a decision of a review panel under section 38, the applicant or formal patient may appeal to the Court of Queen's Bench.

(2) The application shall be made by originating notice.

(3) The notice shall be served on

(a) the Minister,

(b) the chairman of the board of the facility in which a formal patient is detained, and

(c) any other persons the Court directs,

not less than 15 days before the motion is returnable, and the practice and procedure of the Court pertaining to applications by originating notice apply, insofar as they are applicable, to an application under this section, except as otherwise provided by this section.

(4) The application shall be supported by an affidavit of the applicant setting forth fully all the facts in support of the application.

(5) An appeal under this section shall be a rehearing of the matter on the merits, and in addition to any further evidence adduced, the Court may direct that any transcript or minutes taken by the review panel at the original hearing of the evidence be put in evidence on the appeal and may direct that further evidence be given as it considers necessary.

(6) An order of the Court under this section is not subject to appeal.

(7) The Court may make whatever order as to the costs of the application that it considers fit.

(8) The Court may

(a) order the cancellation of the admission certificates or renewal certificates, as the case may be, or

(b) make any other order it considers just.

(9) An appeal under this section shall be heard in private unless the Court otherwise directs.

PART 5

GENERAL

Delegation

41(1) The Minister may in writing delegate any of the powers, duties or functions conferred or imposed on him under this Act or the regulations, including the power to form an opinion, to any person for any purpose in connection with the administration of this Act.

(2) Subsection (1) does not apply to any power of the Minister to make regulations.

(3) A board may delegate to any employees or other persons on the staff of the facility any of its powers and duties under this Act or the regulations.

Powers of
Minister

42 The Minister may do anything he considers advisable for preventing circumstances that may lead to mental disorder and distress and for promoting and restoring mental health and well-being and, without limiting the generality of the foregoing, may

(a) establish and operate places for the observation, examination, care, treatment, control and detention of persons suffering from mental disorder,

(b) make available diagnostic and treatment centres to provide mental health services, including in-patient services, clinical services in the community, community residential services, rehabilitation services, consultation, public education, research and prevention, in various locations in Alberta,

(c) enter into agreements

(i) to obtain services under this Act and for the prevention and treatment of mental illness, and

(ii) with appropriate authorities of the Government of Canada or the government of any province in Canada for the reception, observation, examination, care, treatment and detention in a facility in Alberta of persons suffering from mental disorder,

and

(d) charge fees for any service or materials provided or research done under this Act.

Mental health
advisory
committees

43(1) The Minister may establish 1 or more mental health advisory committees to act in an advisory capacity in connection with any matter specified by the Minister.

(2) The Minister may, with respect to any committee established under this section,

(a) appoint or provide for the appointment of its members;

(b) prescribe the term of office of its members;

	<p>(c) designate a chairman and a vice-chairman;</p> <p>(d) authorize, fix and provide for the payment of remuneration to its members.</p> <p>(3) A committee established pursuant to this section may exercise any powers and perform any duties and functions that the Minister confers or imposes on it in connection with mental health matters.</p>
Regional mental health areas	44 The Minister may establish areas within Alberta as regional mental health areas for the purposes of this Act.
Validity of documents	45 An admission certificate, renewal certificate, warrant, order, transfer or other form issued under this Act or the regulations shall not be held to be insufficient or invalid by reason only of any irregularity, informality or insufficiency in it or in any proceedings in connection with it.
Regulations	<p>46(1) The Lieutenant Governor in Council may make regulations</p> <p>(a) designating any place or part of a place as a facility;</p> <p>(b) classifying facilities for any purpose;</p> <p>(c) in respect of facilities or any class of facility,</p> <p>(i) providing for the creation, establishment, construction, alteration, renovation and maintenance of them,</p> <p>(ii) providing for the government, management, conduct, operation, use and control of them, and</p> <p>(iii) respecting the charges that the owner or operator of a facility or any class of facility may make for diagnostic and treatment services and other services;</p> <p>(d) respecting charges and liability for expenses referred to in section 27.</p> <p>(2) If the Lieutenant Governor in Council designates a place as a facility, he may by regulation</p> <p>(a) provide for which purposes under this Act or the regulations that place is designated as a facility;</p> <p>(b) make inapplicable to a facility or any class of facility any of the provisions of this Act or the regulations.</p> <p>(3) The Minister may make regulations</p> <p>(a) prescribing the remuneration and expenses to be paid to members of review panels;</p> <p>(b) requiring review panels to submit annual reports to the Minister and governing the contents of those reports;</p> <p>(c) providing for forms and their use.</p>
Transitional	47(1) <i>In this section, "former Act" means the Mental Health Act, chapter M-13 of the Revised Statutes of Alberta 1980.</i>

(2) *On the commencement of this Act,*

(a) *a person in respect of whom a conveyance and examination certificate under section 14 of the former Act or 1 admission certificate under section 18 of the former Act has been issued shall be deemed to be a person in respect of whom 1 admission certificate is issued under this Act,*

(b) *a person in respect of whom 2 admission certificates have been issued under section 18 of the former Act shall be deemed to be a person in respect of whom 2 admission certificates have been issued under this Act,*

(c) *a person in respect of whom 2 renewal certificates have been issued under section 20 of the former Act shall be deemed to be a person in respect of whom 2 renewal certificates have been issued under this Act,*

(d) *a person in respect of whom a certificate has been issued under section 41 of the former Act shall be deemed to be a person in respect of whom a certificate is issued under section 25 of this Act, and*

(e) *a person in respect of whom a transfer has been issued under section 42 of the former Act shall be deemed to be a person in respect of whom a transfer is issued under section 26 of this Act.*

(3) *If a hearing of a review panel has commenced before the commencement of this Act, it shall be continued to its conclusion as if this Act had not come into force and the former Act had remained in force.*

(4) *A facility designated under the former Act shall be deemed to be a facility under this Act.*

(5) *The Mental Health Hospital Board, Edmonton and The Mental Health Hospital Board, Ponoka established under the former Act are continued as the boards of The Mental Health Hospital, Edmonton and The Mental Health Hospital, Ponoka, respectively, under the Provincial General Hospitals Act.*

consequential

48(1) *The Alberta Municipal Financing Corporation Act is amended in section 1(h.1) by striking out “Part 5 of the Mental Health Act” and substituting “the Provincial General Hospitals Act”.*

(2) *The Department of Community and Occupational Health Act is amended in section 11(1)(b)(iv) by striking out “the board of management of a Provincial General Hospital” and substituting “a board”.*

(3) *The Fatality Inquiries Act is amended*

(a) *in section 22(3)*

(i) *by striking out “37(4)” and substituting “18(4)”;*

(ii) *by striking out “37(7)” and substituting “18(9)”;*

(b) *in section 40(1.1) by striking out “37(4)” and substituting “18(4)”.*

- (4) *The Financial Administration Act is amended in section 2(5)*
- (a) *in clause (e) by striking out “the board of management of a Provincial General Hospital” and substituting “a board”;*
 - (b) *by repealing clause (e.1).*
- (5) *The Health Facilities Review Committee Act is amended in section 1(b)(ii.1) by striking out “Mental Health Act” and substituting “Provincial General Hospitals Act”.*
- (6) *The Hospitals Act is amended*
- (a) *in section 40*
 - (i) *in subsection (4) by striking out “not more than \$100 and in default of payment to a term of imprisonment not exceeding 15 days” and substituting “not more than \$2000”;*
 - (ii) *by repealing subsection (5)(a) and substituting the following:*
 - (a) *divulge any diagnosis, record or information to the patient to whom the diagnosis, record or information relates or to his legal representative,*
 - (a.1) *with the written consent of a patient or without that consent if the patient is not mentally competent, divulge any diagnosis, record or information relating to the patient to any person, if in the opinion of the person making the disclosure it is in the best interests of the patient to disclose the information,*
 - (iii) *in subsection (6)*
 - (A) *in clause (a)(ii) by striking out “Medical Care Act (Canada) or the Hospital Insurance and Diagnostic Services Act (Canada)” and substituting “Canada Health Act (Canada)”;*
 - (B) *by adding the following after clause (f):*
 - (g) *the board of an approved hospital may divulge any records of diagnostic and treatment services provided in respect of a patient to the Public Guardian if the diagnosis, record or information is, in the opinion of the person making the disclosure, relevant to the making of a guardianship order or a trusteeship order under the *Dependent Adults Act* in respect of the person to whom the diagnosis, record or information relates;*
 - (h) *the board of an approved hospital may divulge any records of diagnostic and treatment services provided in respect of a patient to a board of review appointed pursuant to the *Criminal Code* (Canada) that is to review the case of the person to whom the diagnosis, record or information relates;*
 - (i) *the board of an approved hospital may divulge any records of diagnostic and treatment services provided*

in respect of a patient to a person conducting a preliminary investigation or the Discipline Committee under the *Psychology Profession Act* if

(i) an officer of the Psychologists Association of Alberta makes a written request for it and the disclosure is consented to by the patient or his legal representative, or

(ii) the disclosure is made by a member of the board in compliance with a notice under section 41 of the *Psychology Profession Act* to attend as a witness or to produce documents.

(b) *by repealing section 68(a)(ii).*

(7) *The Legislative Assembly Act is amended in Part 3 of the Schedule by striking out “Board of management of a provincial general hospital” and substituting “Board of a Mental Health Hospital or a Provincial General Hospital”.*

(8) *The Local Authorities Pension Act is amended in section 1(b)(iii.1) by striking out “established under the Mental Health Act” and substituting “under the Provincial General Hospitals Act”.*

(9) *The Local Authorities Pension Plan Act is amended in section 1(1)(h)(iv) by striking out “established under the Mental Health Act” and substituting “under the Provincial General Hospitals Act”.*

(10) *The Ombudsman Act is amended in section 13(2)(b) by striking out “3(1)” and substituting “42(a)”.*

(11) *The Provincial General Hospitals Act is amended*

(a) *by repealing section 1(a) and (b) and substituting the following:*

(a) “board” means the board of management of a Provincial General Hospital or a Mental Health Hospital;

(b) “hospital” means a Provincial General Hospital or a Mental Health Hospital;

(b) *by adding the following after section 20.1:*

PART 1.1

MENTAL HEALTH HOSPITALS

20.2 The following Mental Health Hospitals are hereby continued:

(a) The Mental Health Hospital, Edmonton;

(b) The Mental Health Hospital, Ponoka.

20.3(1) In addition to its powers and duties under section 7(1), the board of a Mental Health Hospital shall operate the Mental Health Hospital under its administration for the observation, examination, care, treatment, control and detention of persons suffering from mental disorders.

(2) In addition to its powers under section 7(2), the board of a Mental Health Hospital may, subject to the approval of the Minister, operate out-patient clinics for the diagnosis and treatment of mental disorders in conjunction with the Mental Health Hospital under its administration and at other places in Alberta.

(12) The Psychiatric Nursing Training Act is amended

(a) in section 1 by adding the following after clause (b):

(b.1) “Minister” means the member of the Executive Council designated by the Lieutenant Governor in Council;

(b) by repealing section 2(a) and (b) and substituting the following:

(a) 2 persons appointed by the Minister, 1 of whom shall be designated by the Minister as chairman,

Repeal

49 *The Mental Health Act, RSA 1980 cM-13, and the Mental Health Amendment Act, SA 1981 c72, are repealed on Proclamation.*

Coming
into force

50 *This Act comes into force on Proclamation.*